

**APPENDIX E****FINAL REGULATORY FLEXIBILITY ANALYSIS*****Report and Order***

As required by the Regulatory Flexibility Act, *see* 5 U.S.C. § 604, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) of the expected impact on small entities of the policies and rules proposed and adopted in the *Report and Order* section of this *Report and Order and Further Notice of Proposed Rulemaking (R&O)*. An Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rule Making and Tentative Decision* in this proceeding, in GEN Docket No. 90-314 and ET Docket No. 92-100, as well as the *Third Memorandum Opinion and Order and Further Notice of Proposed Rule Making* in this proceeding. Additionally, Final Regulatory Flexibility Analyses were incorporated in the *First Report and Order*, the *Third Report and Order*, the *Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, and the *Second Memorandum Opinion and Order* in this proceeding. Written comments to the proposals, including the Initial Regulatory Flexibility Analysis, were requested. As noted in these previous final analyses, this proceeding will establish a system of competitive bidding for choosing among certain applications for initial licenses, and will carry out statutory mandates that certain designated entities, including small entities, be afforded an opportunity to participate in the competitive bidding process and in the provision of spectrum-based services.

***A. Need for and Objective of Rules:***

This *R&O* was initiated to adopt rules and secure comment on proposals for revising rules for narrowband Personal Communications Services (PCS). Such changes to the rules for the narrowband PCS service would promote efficient licensing and enhance the service's competitive potential in the Commercial Mobile Radio Service marketplace. The adopted rules are based on the competitive bidding authority of Section 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. § 309(j), which authorizes the Commission to use auctions to select among mutually exclusive initial applications in certain services, including narrowband PCS. The Omnibus Budget Reconciliation Act of 1993 (Budget Act), Pub. L. No. 103-66, Title VI, § 6002, and the subsequent Commission actions to implement it are intended to establish a system of competitive bidding for choosing among certain applications for initial licenses, and carry out statutory mandates that certain designated entities, including small businesses, are afforded an opportunity to participate in the competitive bidding process and in the provision of narrowband PCS services.

***B. Issues Raised by the Public in Response to the Initial Analysis:***

No party suggested modifications specifically to the Initial Regulatory Flexibility Analysis. The following issues will apply to small businesses.

1. Power and Antenna Height Limits. The Commission clarifies that Section 24.132 of its rules applies to the regional service areas as well as Major Trading Area (MTA)<sup>1</sup> service areas. The Commission amends paragraphs (d) and (e) of Section 24.132 of its rules, 47 C.F.R. § 24.132, to reflect that these rules apply to regional areas. Regional base stations, in addition to MTA base stations, must operate at reduced heights and power limits near service area borders in order to protect adjacent licensees from interference. In addition, the Commission clarifies that a narrowband PCS licensee holding a license for the same channel in an adjacent region or MTA is not required to reduce height and power to protect itself.

2. Auction Rules. Based upon the comments and record before it, the Commission determines that it will not establish an entrepreneurs' block for narrowband PCS similar to its provisions in broadband PCS. The Commission agrees with those commenters who argue that the results of the previously-held narrowband regional auction demonstrate that bidding credits and installment payments can facilitate participation by designated entities in the competitive process, as well as securing licenses for the provision of narrowband PCS. Additionally, the Commission has the experience of other auctions, such as 900 MHz SMR, which did not have an entrepreneurs' block but, nonetheless, had many successful designated entity applicants.<sup>2</sup> Also, the Commission considers narrowband PCS to be less capital intensive than broadband PCS, thereby making it more likely that small businesses, for example, can acquire the financing to win these licenses, particularly for MTAs. Thus, the Commission concludes there is no need to insulate designated entities from other bidders and that bidding credits coupled with installment payments should satisfy its obligations under Section 309(j) of the Communications Act as they have in so many other auctions.

3. Definition of Minority Groups. In the *Competitive Bidding Fifth Memorandum Opinion and Order*, the Commission noted that it would make the same definitional correction made in the broadband PCS context to the definition of minority groups used in the narrowband PCS auction rules.<sup>3</sup> Thus, in an effort to maintain consistency throughout its

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<sup>1</sup> Rand McNally is the copyright owner of the MTA/BTA listings, which list the BTAs contained in each MTA and the counties within each BTA, as embodied in Rand McNally's Trading Areas System MTA/BTA Diskette, and geographically represented in the Rand McNally 1992 Commercial Atlas and Marketing Guide (the "MTA map"), 123rd Edition at pp. 38-39. The conditional use of Rand McNally's copyrighted material by interested persons is authorized under a blanket license agreement dated February 10, 1994, which covers certain services, including PCS. Rand McNally organizes the 50 states and the District of Columbia in 47 MTAs and 487 BTAs. For PCS licensing purposes, we adopted service areas that separated Alaska from the Seattle MTA and added five insular areas: Puerto Rico, U.S. Virgin Islands, Guam, Northern Mariana Islands and American Samoa. In 1994, the number of BTAs was changed to 493 because Puerto Rico was reconfigured into 2 BTA-like service areas. See Amendment of the Commission's Rules to Establish New Narrowband PCS, *Second Memorandum Opinion and Order*, GEN Docket 90-314, 9 FCC Rcd 4519, 4523, ¶ 18 (1994) (*PCS Second MO&O*).

<sup>2</sup> See Press Release, "Wireless Telecom Bureau Releases Progress Report" (rel. March 5, 1997).

<sup>3</sup> Implementation of Section 309(j) of the Communications Act - Competitive Bidding, *Fifth Memorandum Opinion and Order*, PP Docket No. 93-253, 10 FCC Rcd 403, 432, ¶ 52, n.123 (1994).

auction rules for various services, the Commission revises its definition of "members of minority groups" in its narrowband PCS auction rules to include "Blacks, Hispanics, American Indians, Alaskan Native, Asians, and Pacific Islanders."

***C. Description and Number of Small Entities Involved:***

The rules adopted in this *Report and Order* will apply to current narrowband PCS operators and new entrants into the narrowband PCS market. Under these rules, mutually exclusive applications for narrowband PCS licenses will be resolved through competitive bidding procedures.

The Commission does not know how many narrowband PCS licenses will be granted or auctioned, as it has not yet determined the size or number of such licenses. Two auctions of narrowband PCS licenses have been conducted for a total of 41 licenses, out of which 11 were obtained by small businesses owned by members of minority groups and/or women. Small businesses were defined as those with averaged gross revenues for the prior three fiscal years of \$40 million or less.<sup>4</sup> For purposes of this Final Regulatory Flexibility Analysis, the Commission is utilizing the SBA definition applicable to radiotelephone companies, *i.e.*, an entity employing less than 1,500 persons.<sup>5</sup> Not all of the narrowband PCS licenses have yet been awarded. There is therefore no basis to determine the number of licenses that will be awarded to small entities in future auctions. Given the fact that nearly all radiotelephone companies have fewer than 1,000 employees,<sup>6</sup> and that no reliable estimate of the number of prospective narrowband PCS licensees can be made, the Commission assumes, for purposes of the evaluations and conclusions in this Final Regulatory Flexibility Analysis, that all the remaining narrowband PCS licenses will be awarded to small entities.

***D. Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements:***

Narrowband PCS licensees may be required to report information concerning the location of their transmission sites under some circumstances,<sup>7</sup> although generally they will not be required to file applications on a site-by-site basis. Additionally, narrowband PCS

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<sup>4</sup> See Implementation of Section 309(j) of the Communications Act - Competitive Bidding, PP Docket No. 93-253, and Amendment of the Commission's Rules to Establish New Narrowband PCS, GEN Docket No. 90-314, *Competitive Bidding Third Memorandum Opinion and Order and Further Notice*, 10 FCC Rcd 175, 208 (1994).

<sup>5</sup> 13 C.F.R. § 121.201, Standard Industrial Classification Code 4812.

<sup>6</sup> The 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, shows that only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92-S-1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms: 1992, SIC Code 4812 (issued May 1995).

<sup>7</sup> See, *e.g.*, 47 C.F.R. § 1.1301 *et seq.*

license applicants will be subject to reporting and recordkeeping requirements to comply with the competitive bidding rules. Specifically, applicants will apply for narrowband PCS licenses by filing a short-form application (FCC Form 175), and will file a long-form application (FCC Form 600) at the conclusion of the auction. Additionally, entities seeking treatment as small businesses will need to submit information pertaining to the gross revenues of the small business applicant and its affiliates and certain investors in the applicant. Such entities will also need to maintain supporting documentation at their principal place of business.

***E. Steps Taken to Minimize Burdens on Small Entities:***

Section 309(j)(3)(B) of the Communications Act<sup>8</sup> provides that in establishing eligibility criteria and bidding methodologies the Commission shall, *inter alia*, promote economic opportunity and competition and ensure that new and innovative technologies are readily accessible by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women. Section 309(j)(4)(A) provides that in order to promote such objectives, the Commission shall consider alternative payment schedules and methods of calculation, including lump sums or guaranteed installment payments, with or without royalty payments, or other schedules or methods.<sup>9</sup> Therefore, the Commission finds that it is appropriate to establish special provisions in the narrowband PCS rules for competitive bidding by small businesses. The Commission believes that small businesses applying for narrowband PCS licenses should be entitled to some type of bidding credits and should be permitted to pay their bids in installments. In awarding narrowband PCS licenses, the Commission is committed to meeting the statutory objectives of promoting economic opportunity and competition, of avoiding excessive concentration of licenses, and of ensuring access to new and innovative technologies by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.

In determining small business status, the Commission will consider the gross revenues of the small business applicant, its affiliates, and certain investors in the applicant. The Commission will attribute the gross revenues of all controlling principals in the small business applicant as well as the gross revenues of affiliates of the applicant. The Commission will require that in order for an applicant to qualify as a small business, qualifying small business principals must maintain control of the applicant.

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<sup>8</sup> 47 U.S.C. § 309(j)(3)(B).

<sup>9</sup> 47 U.S.C. § 309(j)(4)(A).

*F. Significant Alternatives Considered and Rejected:*

The Commission considered and rejected a proposal to give additional relief to narrowband PCS licensees affected by an interim sharing arrangement with respect to use of narrowband PCS channels in border areas between the United States and Canada.<sup>10</sup> The Commission determined that such special relief is not necessary, as potential bidders to this spectrum had adequate notice of such interim arrangement and the interim arrangement also provides licensees with adequate spectrum protection.

The Commission also considered and rejected a proposal to establish an entrepreneur's block for narrowband PCS similar to the Commission's provisions for such a block of spectrum in broadband PCS.<sup>11</sup> The Commission agrees with those commenters who argue that the results of the previously-conducted narrowband regional auction demonstrate that bidding credits and installment payments can facilitate participation by designated entities in the competitive process as well as securing licenses for the provision of narrowband PCS. Additionally, the Commission has the experience of other auctions, such as 900 MHz Specialized Mobile Radio, where no entrepreneurs' block existed but, nonetheless, many successful designated entity applicants existed. The Commission also considers narrowband PCS to be less capital intensive than broadband PCS, thereby making it more likely that small businesses, for example, can acquire the financing to win these licenses, particularly for MTAs. Thus, the Commission concludes there is no need to insulate designated entities from other bidders and that bidding credits coupled with installment payments should satisfy its obligations under Section 309(j) of the Communications Act as they have in so many other auctions. Moreover, narrowband PCS licensees are free to transfer and assign licenses immediately (unlike broadband PCS), providing further flexibility to acquire licenses post-auction.<sup>12</sup>

The Commission also considered and rejected a proposal to maintain its definition of minority groups eligible for special provisions in the narrowband PCS auction.<sup>13</sup> The Commission instead decided to modify its definition in order to bring it into conformity with the Commission's definition for broadband PCS, namely, "Blacks, Hispanics, American Indians, Alaskan Natives, Asians, and Pacific Islanders."

*G. Report to Congress:*

The Commission shall send a copy of this Final Regulatory Flexibility Analysis, along

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<sup>10</sup> Report and Order at ¶ 14.

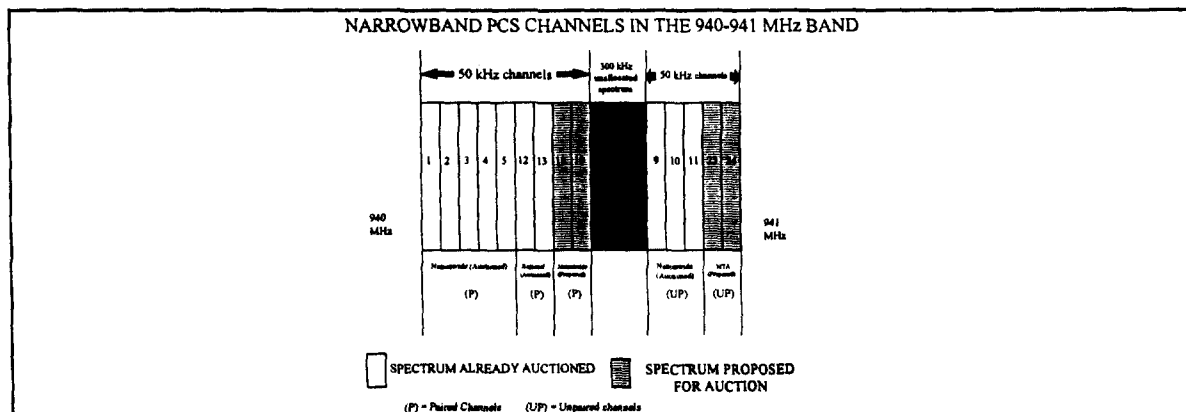
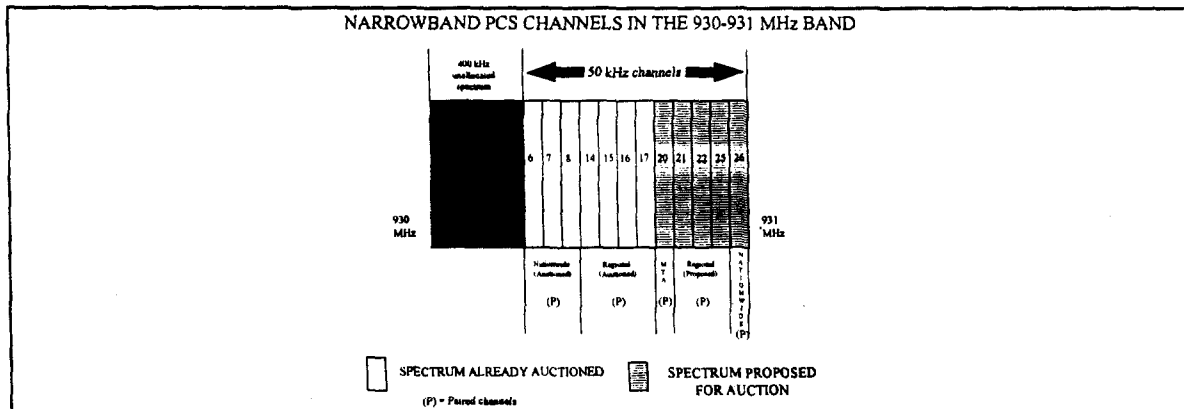
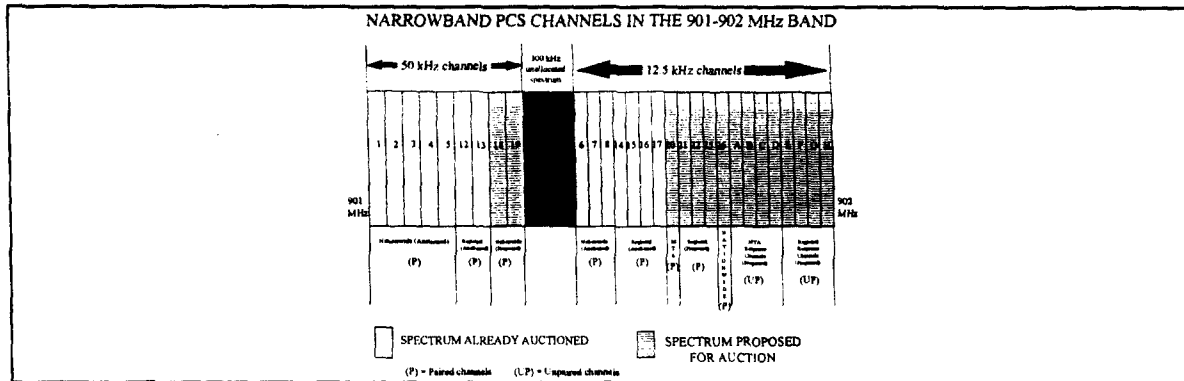
<sup>11</sup> Report and Order, ¶¶ 19-20.

<sup>12</sup> See 47 C.F.R. § 24.839(d).

<sup>13</sup> Report and Order, ¶ 22.

with this *Report and Order/Further Notice of Proposed Rulemaking*, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. § 801(a)(1)(A). A copy of this Final Regulatory Flexibility Analysis will also be published in the Federal Register.

## APPENDIX F - NARROWBAND CHANNELIZATION PLANS



**ORIGINAL CHANNELIZATION PLAN:**

	50/50 kHz (paired)		50/12.5 kHz (paired)		50 kHz (unpaired)		12.5 kHz (unpaired)		Total channels		Overall Total # of licenses	
	Lic.	TBA	Lic.	TBA	Lic.	TBA	Lic.	TBA	Lic.	TBA	Lic.	TBA
Nationwide	5		3		3				11		11	
Regional (5)	2		4						6		30	
MTA (51)		2		3		2		4		11		561
BTA (493)				2				4		6		2958

Lic. = Already licensed.

TBA = To be auctioned.

**PROPOSED CHANNELIZATION PLAN:**

[shading reflects proposed changes:]

	50/50 kHz (paired)		50/12.5 kHz (paired)		50 kHz (unpaired)		12.5 kHz (unpaired)		Total channels		Overall Total # of licenses	
	Lic.	TBA	Lic.	TBA	Lic.	TBA	Lic.	TBA	Lic.	TBA	Lic.	TBA
Nationwide	5	2	3	1	3				11	3	11	3
Regional (5)	2		4	3				4	6	7	30	35
MTA (51)				1		2		4		7		357
BTA (493)										None		None

Lic. = Already licensed.

TBA = To be auctioned.